

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009SF2460
)	EEOC NO.: 21BA91143
JOAN LENORA NELSON)	ALS NO.: 09-0547
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman and Charles E. Box presiding, upon Joan Lenora Nelson's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009SF2460; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On February 7, 2009, the Petitioner filed a charge of discrimination with the Respondent. The charge was amended on August 19, 2009. The Petitioner alleged her former employer Yale Enforcement Service, Inc., ("Employer") reduced her wages because of her sex, female (Count A), and laid her off in retaliation for having opposed unlawful discrimination (Count B), in violation of Sections 2-102(A) and 6-101(A), respectively, of the Illinois Human Rights Act ("Act"). On September 24, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On September 30, 2009, the Petitioner timely filed her Request.
2. The Employer hired the Petitioner as a security officer. The Employer assigned the Petitioner to various work sites as an on-site security officer.
3. In August 2008, the Employer assigned the Petitioner to provide security for an apartment complex. The Petitioner was being paid \$8.00 an hour. At the request of the apartment complex's representative, the Employer removed the Petitioner from this location.
4. In September 2008, the Employer reassigned the Petitioner to provide security for Anheuser Busch ("Busch"). Pursuant to a contract between the Employer and Busch, most of the

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

Employer's security officers received a base pay rate of \$7.75 per hour. The Employer's security officers who were exempt from the \$ 7.75 base hourly pay rate were those security officers: (a) who were high ranking, (b) who worked as mobile patrol officer, or (c) who had seniority. The Petitioner did not fall within any of these three exempt classifications. Therefore, the Petitioner earned \$ 7.75 per hour while assigned to Busch.

5. The Employer utilized a Handbook for Security Officers (the "Handbook"). The Handbook provided that when a security officer's shift ended, that security officer must remain at her post until the relief security officer arrived. If a security officer failed to adhere to this requirement, the Handbook provided that the security officer could be disciplined.
6. On May 10, 2008, and on September 22, 2008, the Petitioner left her post at the end of her shift before a relief security officer had arrived.
7. On September 24, 2008, the Employer disciplined the Petitioner for leaving her post unattended by placing her on probation for 90 days. Also, at Busch's request, the Employer removed the Petitioner from her security assignment at Busch.
8. The Employer assigned the Petitioner to a new work site in October 2008. The new assignment paid at a higher hourly rate than the Busch assignment. The Petitioner accepted this new assignment. However, the Petitioner did not show up for work on October 11, 2008, and October 12, 2008. The Employer thereafter terminated the Petitioner for failing to come to work.
9. The Petitioner now contends in Count A of her charge that her wages were reduced in September 2008 because of her sex. She further contends in Count B of her charge that the Employer laid her off from work on September 24, 2008, in retaliation for having complained about the reduced wages. In her Request, the Petitioner argues that no one else received a pay cut when transferred to the Busch location, that she was coerced to work longer hours to make up the difference in pay rate, and that she never received notice of the 90-day probation.
10. In its response, the Respondent contends there is no substantial evidence of either discrimination or of retaliation, and asks the Commission to sustain its dismissal of both counts of the Petitioner's charge.

CONCLUSION

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination or retaliation exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

As to Count A, there is no evidence that the Employer reduced her pay rate because of her sex. The evidence shows the Petitioner was paid in accordance with the terms of the contract between the Employer and Busch. The Employer provided evidence that it paid nine male security officers who were assigned to Busch the same hourly rate as it paid the Petitioner. Therefore, there is no substantial evidence that similarly situated male employees assigned to Busch earned more than the Petitioner.

As to Count B, there is no substantial evidence the Petitioner was laid off by the Employer on September 24, 2008. The evidence shows the Petitioner was placed on probation following her second violation of the Handbook, and she was removed from the Busch worksite at Busch's request. The Petitioner was then reassigned to a new location in October 2008. The Petitioner admitted she did not attend work at this new location, and she was thereafter terminated. There is simply no evidence in the file which substantiates the Petitioner's claim that the Employer retaliated against her for having opposed unlawful discrimination.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Yale Enforcement Service, Inc., as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 14th day of April 2010.

Commissioner David Chang

Commissioner Marylee Freeman

Commissioner Charles E. Box